JD(ATL)–16–08
Kalamazoo, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

PRIDE AMBULANCE COMPANY, d/b/a PRIDE CARE AMBULANCE, CARE-A-VAN

and Case GR–7–CA–50741

LOCAL 7, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

A. Bradley Howell, *Esq.*, for the General Counsel.
Kalyn D. Redlowsk, Esq., for the Respondent.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Kalamazoo, Michigan, on February 20 and 21, 2008, pursuant to a complaint that issued on December 31, 2007, and that was amended on February 6, 2008.[1] Additional amendments were made at the hearing and after the close of the hearing. As amended, the complaint now alleges that the Respondent maintained certain rules that impinge upon employees' Section 7 rights, threatened striking employees, and rendered assistance to employees in an effort to decertify the Charging Party Union in violation of Section 8(a)(1) of the National Labor Relations Act, discharged striking employees and one employee who made common cause with the striking employees in violation of Section 8(a)(3) of the Act, required striking employees who returned to work to wait 90 days for health care coverage in violation of Section 8(a)(3) of the Act, and unilaterally implemented Return to Work statements and dealt directly with two returning strikers in violation of Section 8(a)(5) of the Act. The Respondent's answer denies any violation of the Act. I find that the Respondent did violate the Act substantially as alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following[2]

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[1] All dates are in 2007 unless otherwise indicated. The charge was filed on October 5 and was amended on November 14 and December 12.

[2] The brief of the Respondent refers to correspondence with the Region 7 Resident Office in Grand Rapids, Michigan, and attaches that correspondence to its brief. The foregoing documents were not offered or admitted into evidence, are not part of the record, and have not been considered. The brief of the Respondent incorrectly states that the General Counsel offered no evidence with regard to paragraph 10 of the complaint. General Counsel's Exhibit 2, a stipulation by the Respondent, admits that the Respondent "maintained an Employee Handbook and Policy and Procedure Manual containing the language set forth in paragraphs 10(a), 10(b) and 10(c)" of the complaint. The Respondent correctly states that the General Counsel presented no evidence relating to unlawful comments allegedly made at a local restaurant on September 11, and I shall recommend that those allegations be dismissed.

Findings of Fact

I. Jurisdiction

The Respondent, Pride Ambulance Company, d/b/a Pride Care Ambulance, Care-A-Van, the Company, is a corporation with facilities in Kalamazoo, Michigan, that provides transportation services to the public pursuant to a contract with the City of Kalamazoo. The Company annually derives gross revenues in excess of $500,000 from its operations and provides services valued in excess of $50,000 to the City of Kalamazoo. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that Local 7, International Brotherhood of Teamsters, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Overview

The Company provides various transportation services in and around Kalamazoo as well as in Nashville, Tennessee. In Kalamazoo, the Company operates out of two facilities, a facility located on Portage Road from which the Ambulance and Wheelchair Division and Metro Van Division operate and a facility located at Cork Street from which the Care-A-Van Division operates. Timothy Onderlinde is the Chief Operating Officer (COO), and he oversees all operations of the Company. Becki Russon is the General Manager of the Company. Both Onderlinde and Russon work out of the Portage Road facility. Dan Robbert is Transportation Manager for the Care-A-Van Division, and his office is located at the Cork Street facility. The complaint allegations relate only to the Care-A-Van Division.

The Company operates the Care-A-Van Division pursuant to a contract with the City of Kalamazoo. Most of vehicles utilized are provided by the City of Kalamazoo, but the Company is responsible for maintaining them. Prior to the Company's acquisition of the contract in late 2005, the services provided by the Care-A-Van Division were performed by a predecessor identified in the record as TMI. The Company began operating the Care-A-Van Division in January 2006. The transportation services provided include transporting customers for personal business including scheduled medical appointments. There are three dispatchers at the Cork Street facility who schedule the pick-up of customers.

The Union was certified on April 27, 2006, as the exclusive bargaining representative of the Care-A-Van drivers in the appropriate unit defined as follows:

> All full-time and regular part-time drivers employed by the Employer in its Care-A-Van Division, located in Kalamazoo, Michigan, but excluding clerical employees, mechanics, guards and supervisors as defined in the Act, and all other employees.

Negotiations for a collective-bargaining agreement were unsuccessful. In June, the employees voted to reject the contract being offered by the Company. Contemporaneously, in the summer of 2007, the drivers experienced problems with the buses that they were driving, including breakdowns and brake failure. On July 30, the members voted to strike. On August 1, the Union struck. The central issues in this proceeding relate to that strike.

B. Procedural Matters

The complaint was amended on February 6, 2008, to delete employee Gary Yeo from the list of striking employees that the Respondent allegedly discharged. Yeo returned to work on August 1. The amendment also alleges that Pat Smith, who is a dispatcher and is not in the unit, was discharged because she "made common cause with the strikers and joined the strike." The Respondent argues that it was "blind-sided" by this amendment to which it had no opportunity to respond and moves for dismissal because the allegation is not "closely related" to the discharge of strikers allegation and is time barred, coming more than 6 months after August 2, the last date that Smith worked. The Respondent also argues that the charge covers only discharges on August 1. The initial charge herein alleged that, on August 1, the Respondent "discharged all employees that participated in the strike." The charge, as amended on November 11, alleges that the Respondent, on August 1, "discharged employees because they engaged in a strike." The Respondent fails to acknowledge that Smith was named as a striking employee in the initial complaint and that its answer, which gives a blanket denial that it did not discharge the listed striking employees, does not treat Smith separately. The answer does not raise an affirmative defense, as the Respondent did at the hearing, that Smith quit and that she was not protected by the Act because she was a supervisor. The Respondent was fully aware that Smith was alleged as a discriminatee. The amendment makes clear that she was a nonunit employee who made common cause with the strikers. The one day discrepancy between August 1 and 2 is immaterial. The amendment was proper, and the Respondent has not been prejudiced in any way. The Respondent's motion to dismiss is denied.

At the end of the second day of hearing, February 21, 2008, Counsel for the General Counsel moved that the hearing be recessed sine die until he could ascertain when a witness who had undergone emergency surgery would be available. On March 10, 2008, Counsel for the General Counsel, citing the continuing unavailability of the witness, filed a motion that two documents, General Counsel's Exhibits 17(a) and (b), be received, that the discrete allegations about which the unavailable witness was expected to testify be withdrawn, and that the record be closed. On that same day, I held a conference call with all parties. The parties agreed that the record was complete regarding the allegations that were litigated at the hearing and requested that they be permitted to file briefs. The Respondent had no objection to the proffered exhibits or withdrawal of the complaint allegations. The General Counsel filed a corrected motion dated March 11, 2008, and on March 17, 2008, I issued an order receiving General Counsel's Exhibits 17(a) and (b), granting the corrected motion to withdraw paragraphs 14, 15, and 17 of the complaint, closing the hearing, and setting the date for receipt of briefs.

C. Facts

At about 5:30 a.m. on August 1, drivers represented by the Union came to the Cork Street facility and parked at a nearby ball field. They then went to the entrance to the facility carrying picket signs. Dispatcher Patricia (Pat) Smith observed them and called Transportation Manager Dan Robbert at about 5:45 a.m. Robbert arrived about 6:30 a.m., opened the window on his vehicle and motioned for Shop Steward Ronald (Ron) Smeltzer to come to him. Smeltzer did so. Robbert told him that he wanted to be "perfectly clear," that "if you guys don't come back now you don't have jobs to come back to." Smeltzer replied that "this could have been avoided if Tim Onderlinde would negotiate with us and fix these buses." Robbert recalled only that he told Smeltzer to tell the striking employees "to please come back to work, that we had several riders counting on their rides." I credit Smeltzer. The striking employees continued to picket.

Although Robbert did not mention returning to the picket line prior to late morning, when he went once to request Shop Steward Smeltzer to contact Union Business Agent Andy

Meulman and once to canvass the employees, employees Patricia Brigance and Dean Chestnut recall that Robbert came to the picket line earlier in the day. Brigance placed this first visit at about 7:30. She recalled that Robbert informed the employees that they could return to work and "it would be as if nothing happened." Chestnut placed this visit at about 8:30. He recalls that Robbert stated that the employees could return "without any repercussions" and "if you didn't come back you can consider yourself terminated." Robbert did not deny speaking twice with the employees. I find that the first occasion that he did so was shortly before 8 a.m. I credit the testimony of Chestnut that, on that occasion, Robbert did say "terminated." I am mindful that the evidence establishes that Brigance did not hear that comment, but there is no evidence that on this occasion Robbert formally addressed all of the striking employees as a group. I note that, although Robbert denied informing any employees that they were fired or did not have a job, he did not deny using the term "terminated."

COO Onderlinde and General Manager Russon arrived at the Cork Street facility at 8 a.m. or shortly thereafter. Onderlinde, Russon, and Transportation Manager Robbert met to "make sure that [critical medical transports] got taken care of" such as transporting individuals to dialysis appointments that could not be missed. Onderlinde spoke with the Company attorney shortly after 9 a.m. Around 9:30 a.m. he directed Robbert to arrange a meeting with the spokespersons for the Union. Robbert went to the picket line and requested that Shop Steward Smeltzer contact Union Business Agent Meulman. At approximately 10:30 a.m. Smeltzer, Meulman, Onderlinde, Robbert, and Russon met in the Cork street office. Russon took some rough notes.

The meeting began with COO Onderlinde asking why the Union was striking. Business Agent Meulmen pointed out that members had rejected the Company's contract offer, and Onderlinde stated hat he understood that the strike was, therefore, an economic strike. Shop Steward Smeltzer interjected that it was a safety strike, citing the condition of the buses and noting that he had spoken with Robbert in July about the condition of the buses, at which time Robbert had told him that there were seven buses on order and that the Company did not "want to put a lot of money into these buses that they were going to retire." Robert disputed Smeltzer's recollection of their conversation. The conversation deteriorated, with various assertions of messages being left to which no response was made and Onderlinde stating that the Company was taking the position that the strike was an economic strike and that the drivers would be permanently replaced.

There is no claim that the employees ceased work concertedly because of abnormally dangerous conditions under Section 502 of the Act. Although Shop Steward Smeltzer characterized the strike as a "safety strike," the Union was seeking to have the Company address the employees' concerns regarding the condition of the buses, a working condition. The employees, by striking in order to have their concerns addressed, were engaged in an economic strike. *TNS, Inc.*, 309 NLRB 1384, 1365 (1992).

As Business Agent Meulman and Shop Steward Smeltzer were leaving, General Manager Russon asked them to ask the drivers if they would "talk to them [the Company]." Smeltzer did so, but no employee expressed a willingness to talk to the Company.

COO Onderlinde "wanted to find out that day how many employees were willing to return." He "didn't know if he [Meulman] would or not" convey the request that the Company wanted to speak with the strikers. Robbert recalls that Onderlinde instructed him "to go out on the picket line and meet with each of the drivers and let them know that they could be temporarily or permanently replaced if they did not return to work, and wanted me to get a response from each individual driver."

As might be expected, the testimony regarding the time of Robbert's meeting and what was said varies. Insofar as the meeting occurred shortly after the Union and Company met in the office, I find, consistent with the testimony of Smeltzer, that the meeting took place about 11 a.m. The employees assembled in a semi-circle. Robbert, who was carrying a legal pad, addressed them as a group and then asked each individually whether that employee was going to return to work and recorded the response on the legal pad. Employee Gary Yeo was the only striker who stated that he would return, and he did so.

Robbert claims that, when he addressed the group of employees, he told them that the Company "wanted them to come back to work, no questions asked," but that if they did not return, "we could temporarily or permanently replace you." No striker testified that Robbert stated "temporarily or permanently replace." Russon's notes, which reflect the responses that Robbert recorded on the legal pad when he addressed each employee individually, reflect that the employees "were asked to come back to work or risk losing their job."

Shop Steward Smeltzer recalled that Robbert stated that he "wanted to be very clear on it and he had to have it in writing what our decisions were." He then stated that "if we came back to work right then there would be no questions asked, and then we could come back. If we didn't, then we could look for other jobs." Employee Robert Schellenberg, who drives for the Company in the summer, specifically denied that Robbert said temporarily or permanently replaced. He recalled that Robbert stated that the employees could come back in to work, "but if you don't come in to work you don't have a job." Although Schellenberg placed the meeting earlier in the day, he testified that this was the meeting at which Robbert addressed each employee individually and at which employee Yeo agreed to return. Employee Cory Snyder recalled that, on the occasion that Robbert asked for their decision and recorded their responses, he informed them that if they did not return to work "that we wouldn't have a job."

I am mindful that Business Agent Meulman and employee Ronald Howard recalled that Robbert used word "terminated" and that employee Patricia Brigance recalled him stating that the employees who did not agree to return were fired. I find that they testified to their understanding of his comments. Employee Dean Chestnut recalled no comment relating to the effect of not returning on the occasion that Robbert had the legal pad and addressed each employee individually. Insofar as Robbert himself claims that he mentioned consequences, claiming that he said "we could temporarily or permanently replace you," I find that Chestnut recalled nothing because he heard nothing that contradicted Robbert's previous statement to him that "if you didn't come back you can consider yourself terminated."

I credit Smeltzer's recollection of Robbert's phrasing, that if the employees did not come back "then we could look for other jobs." Both Schellenberg and Snyder confirm that Robbert's statement related to the absence of the employees' jobs if they did not return. I do not credit Robbert. Russon's notes reporting the meeting of Robbert with the employees do not mention temporary or permanent replacements. They reflect that the employees "were asked to come back to work or risk losing their job." When testifying as an adverse witness pursuant to Rule 611(c) of the Federal Rules of Evidence, Robbert was asked whether "the entire group with the exception of Gary Yeo were on strike, I mean as far as you knew, correct?" Robbert answered, "I would say they walked off the job." When asked whether that was a strike, Robbert answered, "I consider it to be abandoning their job." I credit Smeltzer's testimony that Robbert stated that if the

employees did not come back "then we could look for other jobs."

The list composed by Robbert reflects that the following employees refused to return to work:

Patricia Brigance	Rodney Packard
Dean Chestnut	Robert Schellenberg
Bradley Cosgrove	Ron Smeltzer
Michele Holderman	Cory Snyder
Ron Howard	Rebecca Stanfill Wyman[3]
Ernie Kreitlow	

Employee Rolland Wessell does not appear on Robbert's list, but both Robbert and Shop Steward Smeltzer testified that he was one of the strikers. Insofar as he did not return to work, he "could look for other jobs."

General Manager Becki Russon was interviewed by the local newspaper, the *Kalamazoo Gazette*, on August 1 regarding the strike. On August 2, the newspaper published an article which reported that Russon said that "Pride Care was in the process of hiring new drivers and the striking workers would not be allowed to return to work." Russon testified that she was misquoted, but that no retraction was sought because retractions appear "on page 12 in the size 2 font." Onderlinde testified that the Company does not rely on the local newspaper to convey messages to employees. No communication disavowing the foregoing report was sent to the employees.

On August 6, COO Onderlinde wrote Business Agent Meulman stating that he was "seriously disappointed" by the Union's actions and characterizing statements regarding vehicle safety that were reported in the newspaper "to be disingenuous." The letter does not disavow the statement relating to not allowing the striking workers to return. In the final paragraph, Onderlinde states that to "avoid further damage to our relationship, I once again invite the striking Union members to return to work and encourage the Union bargaining team to return to the bargaining table." The letter was sent to Meulman, not the employees.

In undated letters that were sent on August 23, Onderlinde wrote all employees enrolled in the Company's group health insurance plan. The letter states:

> Without any prior notice or warning, on August 1, 2007, you along with 14 other union members went on strike and began picketing. Despite Pride Care Ambulance's repeated requests that you (and the other striking employees) return to work and the bargaining table, you have consistently refused to do so. An employer is not required to finance strike activity against itself. Accordingly, if you continue to strike and refuse to return to work, Pride Care Ambulance will cease paying its portion of your health insurance premiums effective September 1, 2007. Attached please find a notice of your COBRA rights.
>
> Finally, please be advised that you will be required to comply with both Priority Health and Pride Care Ambulance re-enrollment requirements (which includes a 90-day waiting period) if you do not elect COBRA coverage and later return to work and reenroll ….

[3] The complaint names Rebecca Stanfill. Her last name is now Wyman. To avoid confusion I shall refer to her as Stanfill Wyman.

The attached notice informed the employees that "Pridecare [sic] Ambulance uses Infinisoure COBRA Compliance System, Inc., for all our Cobra coverage" and sets out contact information. Employees Patricia Brigance and Ron Howard confirmed that, prior to receipt of the foregoing letter, the only occasion upon which they had encountered a waiting period for insurance coverage was when they were hired as new employees.

On August 29, Infinisource sent notices to the striking employees who were enrolled in the group plan advising the employees of their COBRA rights. The heading on the notice reflects that it is from "Pride Ambulance Co." The first paragraph states that "a COBRA qualifying event, which terminates your group health plan coverage, has been reported." The qualifying event, set out in a box, states that the qualifying event is "Termination of Employment" as of "9/1/2007."

Administrative Assistant Sherry Shoemaker testified that Onderlinde told her to take the striking employees off of insurance and send COBRA notices. She denied that he told her that the striking employees had been fired. She explained that she selected "termination" as the qualifying event "because there wasn't anything that really fit." She did not consult with Infinisource.

I find it incomprehensible that Onderlinde, whose letter advised the employees of the requalification period that would be imposed if they did not return to work, was unaware that the striking employees who had been enrolled in the health plan would be advised by Infinisource that they were no longer enrolled because of "Termination of Employment." A status report sent to the Company on September 4 lists the employees whose coverage ceased and, in each instance, states that the event was "Termination of Employment."

The parties met for collective bargaining negotiations with a mediator in September and again in October. The negotiations were unsuccessful. Between the negotiating sessions, on September 28, Onderlinde again wrote Meulman expressing again that he was "seriously disappointed" by the Union's actions. The final paragraph states that to "avoid further damage to our relationship … I once again invite the striking Union members to return to work and encourage the Union bargaining team to either return to the bargaining table or continue with mediation." The letter was sent to Meulman, not the employees.

On January 29, 2008, Onderlinde sent a letter to all striking employees that states, in pertinent part:

> As you may know, the National Labor Relations Board has filed a Complaint against the Company alleging, among other things, that the Company fired you on August 1, 2007, after you went on strike. The Company disagrees with such Complaint allegation, among others. So there is no confusion, and consistent with Company's August 1, 2007, oral representations and August 6 and September 28 letters, I am once again letting you know that you were not terminated, you are welcome to return to work, and the Company stands ready and willing to continue negotiations with your bargaining representative(s). … [T]here is nothing in your personnel record indicating that you have been terminated from the Company. ….

As already noted, the letters of August 6 and September 28 were sent to Meulman, not the employees. Neither letter states that the employees have not been terminated. They state only that the employees are invited to return. Administrative Assistant Shoemaker testified that the Company does not receive the COBRA notice sent by Infinisource to the employees, but

the Company did receive the status report that reflects that the qualifying event for each striking employee was "Termination of Employment" as of September 1. Thus, the representation that there was nothing in the individual employee's personnel file reflecting termination would appear to be technically correct. The January 29, 2008, letter does not mention the undated Company letter sent on August 23 advising that employees who do not elect COBRA will, like newly hired employees, be required to undergo a 90 day waiting period before reenrolling in the group health plan.

Employee Michelle Cronk was not scheduled to work on August 1. On the evening of August 1, Transportation Manager Robbert called her about 5 p.m. and asked if she would be coming in the following day, Thursday, August 2. Cronk replied that she would "probably be there." Robbert stated that "if I did not show [up] to work Thursday morning August 2d that I would be fired." Cronk questioned, "[A]re you telling me if I do not show up to work on Thursday morning that I'm fired?" Robbert answered, "[Y]es, you are." Upon going to the facility on the morning of August 2, Cronk spoke with her coworkers on the picket line and decided to "stand behind my coworkers on the safety strike."

Robbert denied that he informed Cronk that she would be fired if she joined the strike. He acknowledged that he called, asking whether she was coming in the following day. He recalls that she answered that "as far as I know, I'll be there," and "that was pretty much the extent of the conversation." He does not recall mentioning the strike. He denied telling her that if she joined the strike she would be fired, but did not deny informing her that if she did not show up for work that she would be fired, the words that Cronk attributed to him. I credit Cronk who, having heard what she understood to be a threat, confirmed her understanding by questioning whether Robbert actually meant what he had said.

On the morning of August 2, about 6:30 a.m., Robbert handed supervisory dispatcher Pat Smith a list of who was driving that day. She observed that the name "P. Smith" was on the list and asked whether that was her. Robbert replied that it was, and Smith stated that that she was not going to drive, "I stand behind the drivers; the buses are in terrible conditions [sic] and for safety reasons I wasn't driving either." Robbert replied, "[O]h, whatever," and departed. At about 7 a.m., Robbert returned. Smith, having stated that she would not drive, asked Robbert what he wanted her to do. He stated that if she "wasn't going to listen to the things that management requested me to do that he'd have to let me go." Smith asked, "[D]oes that mean you're going to fire me?" Robbert stated, "[Y]es, I'm firing you." Smith stated that was "all I needed to know," gathered her belongings, and went to the picket line.

Upon cross-examination, when Smith was questioned by Counsel for the Respondent regarding being fired, the following testimony was elicited:

> Q. Now you testified that you asked Mr. Robbert whether he was firing you, is that correct?
> A. Yes.
> Q. Didn't he respond that that was only a possibility?
> A. Nope.
> Q. So if he testifies otherwise then he's lying?
> A. Yep.

Robbert testified to only one conversation in which he told Smith that he needed her to "do this route for me until we can get other people aboard," and that she said she was not going to because "I support the drivers." Robbert testified that he repeated his

request, that Smith asked, “[W]hat if I don't … are you going to fire me?” Robbert claims that he stated that “could be a possibility,” and that Smith “gathered up her stuff and left.”

Both upon demeanor and the sequence of events, I credit Smith. Robbert did not acknowledge that there were two conversations and that the first began when he presented Smith with a schedule that listed her as driver. Upon her refusal to accept the assignment, he said, “[O]h whatever.” Robbert does not have the authority to hire and fire but only to recommend in that regard. When Smith refused to drive, I find that he went to receive instructions. I need not speculate whether he consulted with Onderlinde or Russon or both. He returned and informed Smith that if she “wasn't going to listen to the things that management requested me to do that he'd have to let me go.” Smith asked, [D]oes that mean you're going to fire me?” He replied, “[Y]es, I'm firing you.”

Employee Patricia Brigance, who struck on August 1, called Transportation Manager Robbert on August 31 and asked if she could speak to him about returning to work. He told her that she could but that she would have to speak with both him and COO Onderlinde. They met on September 5 at the Portage Road facility and spoke for about half an hour. At the conclusion of the meeting, in what Brigance described as an “uncomfortable moment,” they requested that she sign a Return to Work Statement. Brigance signed the document and returned to work. The first paragraph of the Return to Work Statement states that Brigance will receive the same pay and benefits as provided in the past with one exception, there “would be no health coverage for a period of ninety (90) days” as explained in their meeting on September 5 and in the letter sent “on August 23, 2007, from Pride Care.” The second paragraph acknowledges that Brigance “on my own accord have made contact with the employer,” that the employer did not “encourage me or offer me any additional incentive to return to work,” and that Brigance understood that “the employer is still using the same vehicles” as it was on August 1. It concludes, “I agree to follow all company policies as with any other employees currently working at the Care-A-Van division.”

Employee Rebecca Stanfill Wyman, met with Robbert and Onderlinde on October 10, signed a similar statement, and returned to work.

On September 20, employee Timothy Tyler filed a decertification petition, Case No. GR-7-RD-3587, that was withdrawn on November 1. Transportation Manager Robbert was aware that Tyler was circulating a decertification petition, and he had seen it. Tyler, on what would have been a day or two prior to September 20, requested a company van to go to lunch, that “he had something to mail.” Robbert admitted that he assumed that the “something” related to the decertification petition. He denied Tyler permission to use a company van, but permitted him to take his personal truck, something that he “hardly ever” did. Tyler requested postage because he did not want to pay to mail the document, and Robbert told him to take it out of the “overage jar,” a jar in which drivers put overpayments. Typically, Robbert would use the overpayments to purchase coffee and doughnuts for the employees on Fridays. Employees had to receive Robbert’s permission to take money from the jar.

D. Analysis and Concluding Findings

1. The Discharge of the Striking Employees

The complaint, in subparagraph 18(a), alleges that the Respondent discharged 13 striking employees.

Section 7 of the Act protects the right of employees "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Section 13 provides that "[n]othing in this Act … shall be construed so as either to interfere with or impede or diminish in any way the right to strike." The discharge of employees for exercising their right to strike violates Section 8(a)(1) of the Act, and, when the strike constitutes union activity, discharge for engaging in a strike violates Section 8(a)(3) as well because it constitutes "a blow to the very heart of the collective-bargaining process." *Super Glass Corp.*, 314 NLRB 596, 597 (1994).

The Respondent contends that the employees were not discharged. The Board, in *Kolkka Tables & Finnish American Saunas*, 335 NLRB 844 (2001), overruled prior cases which found no discharge when the employers engaged in brinksmanship in order to "bluff strikers back to work." Id. at 847-848. The Board has long held that informing employees that "you better look for another job if you strike" or "similar warnings" are threats that violate Section 8(a)(1) of the Act. *Lee A. Consaul, Inc.*, 192 NLRB 1130, 1153 (1971), enf. denied on other grounds, 469 F.2d 84 (9th Cir. 1972). Prior to the decision in *Kolkka Tables*, the Board had, in some cases, "focused on the employer's intent behind the threat, manifested by its subsequent conduct, particularly its willingness to reinstate strikers." Id. at 847. Under *Kolkka Tables* the statements made by the employer are evaluated to determine whether the employees "were not only unlawfully threatened by the statements, but were also unlawfully discharged." The determination of whether striking employees have been discharged is made "from the perspective of the employees" and "is based on 'whether the employer's statements or conduct would reasonably lead the employees to believe that they had been discharged.' *NLRB V. Hilton Mobile Homes*, 387 F.2d 7, 9 (8th Cir. 1967). See *Brunswick Hospital Center*, 265 NLRB 803, 810 (1982). …. Moreover, the employer will be held responsible when its statements or conduct create an uncertain situation for the affected employees." Id. at 846.

Robbert's statement to Shop Steward Smeltzer at 6:30 a.m. that "if you guys don't come back now you don't have jobs to come back to" and his statement to employee Chestnut about 8 a.m. that "if you didn't come back you can consider yourself terminated" certainly constituted threats. The complaint alleges no threats of discharge on August 1. Thus the General Counsel appears to consider those threats to be subsumed in the discharge allegation. Insofar as there are no August 1 threat allegations, I shall make no finding in that regard.

At the 11 a.m. meeting, when Robbert obtained the decision of each striker as to whether he or she was going to return to work, he stated that if the employees did not come back "then we could look for other jobs." Although Onderlinde testified that Robbert has authority only to recommend terminations, there is no evidence that any employee was aware of that limitation. From the perspective of the employees, Robbert discharged them. That conclusion is confirmed by the testimony of the employees who incorrectly heard, but correctly concluded, that he stated that they were fired or terminated.

The reasonable belief of the employees that they had been discharged was confirmed by the article in the *Kalamazoo Gazette*, published on August 2, which reported that General Manager Russon stated that that "Pride Care was in the process of hiring new drivers and the striking workers would not be allowed to return to work." I understand Russon's rationale regarding the ineffectualness of a retraction, but the Respondent never communicated to the striking employees that the report was in error. The Respondent, in its brief, notes the testimony that the Respondent does not "rely on the press to communicate with their employees." Accepting that proposition, the record does establish that the Respondent communicates with

its employees through letters and by telephone. Michelle Cronk was called to determine whether she was going to report to work. Letters signed by Onderlinde were sent to the employees whose group health plan coverage was being discontinued. No letter was sent and no telephone calls were made to employees contradicting the statement made in the newspaper article.

Lest any employee continued to question his or her status with the Respondent, all employees enrolled in the Respondent's health plan were informed in a notice from the Respondent's agent, with a heading reflecting that the communication came from Pride Ambulance Co., that their coverage ceased as of September 1 and that the event that qualified them for COBRA coverage was "Termination of Employment."

The Respondent, in its brief, notes that "none of the witnesses testified that they relied on the Infinisource COBRA Notice in determining they were fired." The short answer to that observation is that that the COBRA notice simply confirmed what they had been told on August 1. The fact that the COBRA notice reported the effective date as 9/1/07 at best "create[d] an uncertain situation for the affected employees" regarding whether their termination for insurance purposes was different from the date they understood that they had been terminated. No letter was sent and no telephone calls were made to employees contradicting the statement made in the COBRA notices that the qualifying event was "Termination of Employment."

The Respondent argues that COO Onderlinde's letters of August 6 and September 28 to Business Agent Meulman are inconsistent with the termination of the strikers insofar as they state that the Respondent "once again" invites them to return to work. As the brief of the General Counsel points out, the letters never state that the employees have not been fired, nor do they state the terms upon which the employees would be permitted to return. The letters, which were sent to Meulman, not the employees, chastise the Union for going on strike. The letter of August 6 disputes the Respondent's knowledge of the safety issues that concerned employees. Neither letter requests that Meulman become a messenger for the Respondent or states that the Respondent expects him to act as its agent in inviting the employees to return to work. When the Respondent intended to contact employees it called them, as when Robbert called Cronk, or wrote them directly, as Onderlinde did on August 23 regarding insurance and on January 29, 2008, when he stated to the employees that they had "not been terminated."

The Respondent further argues that, even if it be found that the employees were discharged, the "invitations that they return to work effectively rescinded their terminations." I disagree. The "invitations" in the letter to Meulman did not assure that the employees would be returning under the same working conditions, and as of September 1, it was clear that they would not be. Employees who had been covered by the Respondent's health plan were required to requalify as new employees, which constituted denial of an accrued benefit. The two employees who returned, Patricia Brigand on September 5, and Rebecca Stanfill Wyman on October 10, were required to submit to an interview conducted by both COO Onderlinde and Transportation Supervisor Robbert prior to being permitted to return to work, a requirement inconsistent with their status as returning strikers. See *Sunol Valley Golf Club*, 310 NLRB 357,373(1993), citing *Scalera Bus Service*, 210 NLRB 63, 63-64 (1974). At the conclusion of that interview they were required to acknowledge, in writing, their understanding that they were being required to requalify for coverage in the group health insurance plan, the same requirement imposed upon new employees.

The Respondent points to the return to work of Brigance on September 5 and Stanfill Wyman on October 10 as evidence that the employees had not been discharged. As already noted, they were returned with different working conditions in that they had had to requalify for

group health coverage. As noted in *Kolkka Tables & Finnish American Saunas*, supra at 847 fn. 7, their reinstatement "does not alter the illegal character of the original discharge, but only eliminates the need for a reinstatement order for them."

On January 29, 2008, the Respondent sent a letter to each striking employee stating that they had not been terminated. That of course is the same contention that the Respondent has maintained throughout this proceeding. The letter does not address the August 29 communication from Pride Care Ambulance Co. to employees who were enrolled in the health insurance plan that stated that the qualifying event for their COBRA eligibility was "Termination of Employment." The Respondent's brief acknowledges that the January 29, 2008, letter does not meet the standards set out in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), with regard to disavowal of an unfair labor practice and, consistent with the position that the Respondent has maintained, states that no *Passavant* contention is being made because "the Company is not admitting (and has never admitted) that it committed any unfair labor practice." Nevertheless, the Respondent asserts that any backpay liability should cease at least as of January 29, when the letter was sent. I disagree. "The fact that the employees were then [when discharged] on strike does not preclude a finding of unlawful discharge, with entitlement to backpay commencing at that point. *Naperville Ready Mix, Inc.*, 329 NLRB 174, 185 (1999). In *Grosvenor Resort*, 336 NLRB 613, 618 (2001), the Board summarized the employer's obligation to discharged strikers stating:

> "[W]hen strikers are unlawfully discharged, they are not required to request reinstatement since, by discharging them, the employer has signaled that he does not regard them as strikers entitled to reinstatement upon request." *Naperville ready Mix, Inc.*, 329 NLRB 174, 185 (1999). Thus, as the Board has long held, "a discharged striker is entitled to backpay from the date of discharge until the date he or she is offered reinstatement." *Abilities & Goodwill, Inc.*, 241 NLRB 27 (1979), enf. denied on other grounds 612 F.2d 6 (1st Cir. 1979).

In view of the Respondent's contention that the employees were not discharged, this is not a dual motive case, and an analysis under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981). cert. denied 455 U.S. 989 (1982), is not required. Even if a *Wright Line* analysis were applicable, the General Counsel established union activity, employer knowledge of that activity, animus towards that activity, and the discharge of the striking employees. The Respondent presented no evidence that its actions would have been taken in the absence of union activity.

By discharging the 12 employees who engaged in a strike on August 1 and by discharging employee Michele Cronk for engaging in the strike beginning on August 2, the Respondent violated Section 8(a(1) and (3) of the Act.

2. The Discharge of Patricia (Pat) Smith

The complaint, as amended, in subparagraph 18(b), alleges that Smith was discharged because she "made common cause with the strikers and joined the strike."

The Respondent contends that Smith quit, that she was not discharged. The document sent to her with regard to the cancellation of her insurance states "Termination of Employment," but the effective date with regard to Smith is August 1, 2007. As discussed above, I have found that Smith was discharged when she refused to perform struck work.

The Respondent further contends that, if it be found that Smith was discharged, it was

privileged to do so because she was a supervisor.

Section 2(11) of the Act provides that a supervisor is "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a routine or clerical nature, but requires the use of independent judgment." The burden of establishing that an individual is a supervisor is upon the party asserting the supervisory status of the individual in question.

Smith's title as a supervisor is "merely secondary indicia of supervisory status." *John N. Hansen, Co.*, 293 NLRB 63, 64 (1989). There is no evidence that she had any authority to "hire, transfer, suspend, lay off, recall, promote, discharge, … discipline other employees, … or to adjust their grievances, or effectively to recommend such action."

Transportation Manager Robbert testified that Smith was promoted to supervisor in order to "help facilitate the day-to-day operations." He claimed that she supervised both the two other dispatchers and the drivers, but acknowledged that she, like the other two dispatchers, was hourly paid and that she had no authority to discipline. He gave no example relating to supervision of the other dispatchers. He admitted that drivers, "for the most part," drive the same route each day. Regular customers have a regular pickup schedule. What are referred to as "demand riders," customers who are not on the schedule but who call the office for transportation, are fit into the schedule. As described by Robbert, the dispatchers would see where "the drivers are geographically and say, oh, that person is closer to driver A and put him on his route." All dispatchers perform this function. When asked what additional duties Smith performed because of her supervisory status, Robbert answered, "the movement of routes, the assignment of routes, the assignment of buses, that kind of thing." He then altered the foregoing answer stating that Smith could "assign routes, assign vehicles, alter routes if need be, to make sure that daily operations were taken care of." He gave no details or examples. It is incumbent upon the party with the burden of proof to adduce "concrete evidence showing how assignment decisions are made." *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002).

Smith explained that her job tasks are the same as the other two dispatchers but that she was the "only one that knew the Care Van system." That system, which is not computerized, requires looking "at where the person needs to go to and from and … figure[ing] out where to put the ride." "The assignment of tasks in accordance with an Employer's set practice, pattern or parameters, or based on such obvious factors as whether an employee's workload is light, does not require a sufficient exercise of independent judgment to satisfy the statutory definition [of a supervisor]." *Franklin Home Health Agency*, supra, 830, citing *Express Messenger Systems*, 301 NLRB 651, 654 (1991) and *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1075 (1985).

The Respondent argues that Smith "had both the responsibility for and authority to assign both routes and buses to the drivers," and points out that, on the morning of the strike, Smith testified that she had to "re-route the routes and figure out who was going to drive them." The Respondent presented no evidence that Smith's actions relating to re-routing and assigning available drivers involved independent judgment on her part rather than action dictated by management. On the morning of the strike Onderlinde, Russon, and Robbert met between 8 a.m. and 9 a.m. to "make sure that [critical medical transports] got taken care of." Purported supervisor Smith was not included in that meeting, nor was she asked to accompany Robbert when he addressed the drivers, although he claimed that she supervised

the drivers. There is no probative evidence that Smith, under normal circumstances, had the authority to assign routes. With regard to the assignment of buses, her uncontradicted testimony establishes that, if a driver's bus was not operating, she would assign a working bus from "whatever bus was left." Even if Smith made reassignments on the morning of August 1, that occurred because of the unforeseen circumstance of the strike. In *Croft Metals, Inc.*, 348 NLRB No. 38 (2006), the Board, in applying the analytical framework of *Oakwood Healthcare*, 348 NLRB No. 37 (2006), to work assignments dictated by unforeseen circumstances, noted that the lead person would "sometimes switch tasks among employees." The Board specifically held that such actions do not constitute the "designation of significant overall duties … to an employee" but was rather an "ad hoc instruction that the employee perform a discrete task." Id. slip op. at 6. The assignments of an alternate bus due to a breakdown and of a different route because of a strike constitute ad hoc assignments.

Prior to becoming dispatch supervisor, Smith had filled in for a few weeks after the former Transportation Manager left until Robbert was hired. Filling in due to extraordinary circumstances does not confer supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997). After being promoted, she filled in for Robbert for a week when he was on vacation. "[S]poradic assumption of supervisory duties during annual vacation periods" does not establish supervisory status. Id at 1047, citing *Jakel Motors*, 288 NLRB 730 (1988).

Smith's designation as supervisory dispatcher was predicated upon her expertise regarding the basic routes which were the same as they had been under the predecessor employer. Smith testified that she "would have to run it by Dan [Robbert] if we change any of the routes around." New drivers, who would be hired when a former driver quit, were given "whatever space needed to be filled," and that decision was made by Robbert. Robbert did not contradict the foregoing testimony.

The burden of establishing supervisory status is upon the party asserting that status. The Respondent has not met that burden. The evidence in this case does not establish that Smith assigned, responsibly directed, or exercised independent judgment. Her discharge for making common cause with the striking employees by refusing to perform struck work violated Section 8(a)(1(and (3) of the Act.

3. The Allegations Related to Requalificaion for the Health Care Plan

The complaint, in paragraph 12, alleges that the Respondent threatened striking employees with a 90 day waiting period for health care coverage if they did not return to work; in paragraphs 19 and 20, it alleges that the Respondent imposed the 90 day waiting period for health care benefits upon returning strikers Brigance and Stanfill Wyman; in paragraph 22, it alleges that the Respondent unilaterally "implemented the use of Return to Work Statements and mandated that employees sign said statements prior to being allowed to return to work;" and in paragraphs 23 and 24, it alleges that the Respondent bypassed the Union and "dealt directly with Unit employees regarding Return to Work statements."

The Respondent's letter of August 23 states that the Company is not required to finance a strike against itself, and the complaint does not allege the cessation of payment of insurance premiums by the Respondent for striking employees to be a violation. However, the statement in the letter relating to imposition of a requalification period threatens striking employees with a changed working condition if they "continue to refuse to return to work," and that violates Section 8(a)(1) of the Act as alleged in paragraph 12 of the complaint.

The Respondent, in its brief at footnote 28, observes that the foregoing threat allegation

refers to striking employees, implying an inconsistency with the discharge allegation. Striking employees who are discharged maintain their status as strikers. An employer that discharges strikers must offer them reinstatement, after which their rights are determined on the basis of their status as striking employees. There is no inconsistency.

The violation alleged in paragraphs 19 and 29 is the denial of an accrued benefit by requiring returning strikers to requalify for benefits. The Board, in *Advertiser's Mfg. Co.*, 294 NLRB 740 (1989), cites *Texaco, Inc.*, 285 NLRB 241 (1987), in which the Board explained that, under the analysis set out *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967):

> … [T]he General Counsel bears the prima facie burden of proving at least some adverse effect of the benefit denial on employee rights. The General Counsel can meet this burden by showing that (1) the benefit was accrued and (2) the benefit was withheld on the apparent basis of a strike. … Once the General Counsel makes a prima facie showing of at least some adverse effect on employees' rights, the burden under *Great Dane* then shifts to the employer to come forward with proof of a legitimate and substantial business justification for its cessation of benefits. Id at 743.

In *Advertiser's Mfg. Co.*, supra at 744, the respondent conceded that, before correcting an error, employees had been denied benefits because of the requalification period imposed. The error did not constitute a business justification. Similarly, the requalification period for life insurance benefits was applied to strikers, but not to employees who did not strike. The Respondent, although contending that its conduct "was justified by a desire to avoid increased costs," never contacted the insurance carrier. The Bound found that the respondent in those circumstances had not established a business justification, and Section 8(a)(1) and (3) violations were found in both situations.

In the instant case, the requirement that the strikers must requalify for the group health plan is predicated upon a break in service for which the qualifying event, on the basis of purportedly erroneous input from the Respondent, was "Termination of Employment." Although the Respondent argues that the employees had not been terminated, that is what was communicated to the employees and that is what is reflected on the September 4 status report that the Respondent received. Insofar as the reason for requalification was a break in service because of the termination of the striking employees, it was predicated upon an unlawful act. Even if I accept the Respondent's claim that "termination" was incorrect, the Respondent took no action to correct or rectify that error. Thus, the requalification period either was predicated upon an unlawful act, termination, or an erroneous report that the Respondent took no action to correct. In ether event, the Respondent has not established a legitimate business justification for denial of the accrued benefit of eligibility. By requiring striking employees to requalify for the group health plan, the Respondent violated Section 8(a)(1) and (3) of the Act.

The Respondent gave no notice to the Union with regard to the requalification period. Health insurance eligibility is a working condition. By unilaterally imposing the requalification period without notice to the Union, the Respondent violated Section 8(a)(5) of the Act.

Prior to returning to work employees Brigance and Stanfill Wyman were required to meet with Onderlinde and Robbert and sign a statement confirming that they "agree to follow all company policies," one of which was the absence of health coverage for a period of 90 days which had specifically been explained to them in their respective interviews. I find no vice in an employer obtaining a written statement, similar to statements confirming the giving of assurances under *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), that the returning employee has not been given any special incentives and is voluntarily returning to work. The vice is not

the signing of the Return to Work Statement as such, but in its contents which required the former striking employees to agree to company policies that included a unilateral change in working conditions. By requiring the employees to agree to unilaterally changed working conditions, the employer engaged in direct dealing in violation of Section 8(a)(5) of the Act.

4. Assistance Regarding Decertification

Paragraph 16 of the Complain alleges that Dan Robbert "rendered assistance to employees in an effort to decertify the … Union by providing money and transportation assistance to file a decertification petition." As discussed above, Robbert admits permitting employee Tim Tyler to use his personal vehicle to mail a document that he assumed was the decertification petition and gave him permission to use money from the overage jar in order to pay the postage that Tyler was unwilling to pay out of his own pocket. Although employers may render ministerial assistance with regard to decertification petitions, such as providing the address and telephone number of Board offices, it may not engage in overt conduct constituting assistance. In *Cummins Component Plant (Cardinal Systems)*, 259 NLRB 456, 461 (1981), cited by the General Counsel, the Board condemned paying for telephone communications and postage. The cases cited by the Respondent relating to ministerial aid do not involve the payment of money. On this record, given Tyler's unwillingness to pay to mail the petition, the petition would not have been filed in the absence of Robbert's permission to use money from the overage jar and to use his vehicle and the gasoline thereby consumed to take the petition to be mailed. By rendering assistance regarding decertification of the Union, the Respondent violated Section 8(a)(1) of the Act.

5. Rules Relating to Confidentiality

The complaint, in paragraph 10, sets out three rules that allegedly restrict employees' exercise of their Section 7 rights. The Respondent has stipulated that it does maintain the rules set out in the complaint and provides the entire rule set out in subparagraph 10(c). The first rule, alleged in subparagraph 10(a), prohibits the "[g]iving out confidential information concerning other employees, Company documents, customers or patients." The third, set out in subparagraph 10(c) states:

> Salary, benefit, and other personal information relating to employees shall be treated as confidential. Personnel files, payroll information, disciplinary matters and similar information shall be maintained in a manner designed to ensure confidentiality in accordance with applicable laws. Employees will exercise due care to prevent the release or sharing of information beyond those persons who may need such information to fulfill their job function.

The General Counsel presented no evidence that the foregoing prohibitions relate to other than the proper maintenance and control of proprietary information. *Asheville School*, 347 NLRB No. 84 (2006). I shall recommend that subparagraphs 10(a) and 10(c) be dismissed.

Subparagraph 10(b) alleges a rule that provides that "[c]ompensation is considered an individual and personal issue between management and the employee and should not be discussed with anyone." The foregoing prohibition upon employees discussing their own compensation, "an inherently concerted activity," violates Section 8(a)(1) of the Act. *Asheville School*, supra, JD slip op, at 4, citing *Automatic Screw Products Co.*, 306 NLRB 1072 (1992).

Conclusions of Law

1. By discharging unit employees because they engaged in a strike, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

2. By discharging nonunit employee Pat Smith because she made common cause with the striking employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

3. By threatening employees that if they did not return to work they would be required to requalify for group health insurance, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By requiring returning striking employees to requalify for group health insurance, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

5. By bypassing the Union and dealing directly with striking employees by requiring that they agree to the requalification period for group health insurance prior to returning to work, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

6. By unilaterally, without notice to or bargaining with the Union, changing the working conditions of striking unit employees by requiring that they requalify for group health insurance, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

7. By rendering assistance to employees in an effort to decertify the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

8. By maintaining a rule prohibiting discussion among employees of their wages, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having unlawfully discharged the striking employees and Pat Smith, it must offer all them except Patricia Brigance and Rebecca Stanfill Wyman reinstatement and must make all of them whole for any loss of earnings and other benefits, specifically including any loss incurred because of denial of health care benefits due to the 90 day requalification period.[4] Backpay shall be computed on a quarterly basis from August 1, 2007, with regard to all

[4] The return of additional employees, noted in the brief of the Respondent but not reflected in the record, can be addressed in the compliance stage of this proceeding.

striking employees except Michelle Cronk, and from August 2. 2007, with regard to Michelle Cronk and Pat Smith to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent must rescind the rule prohibiting discussion among employees of their wages.

The Respondent will also be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Pride Ambulance Company, d/b/a Pride Care Ambulance, Care-A-Van, Kalamazoo, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Discharging employees represented by Local 7, International Brotherhood of Teamsters, because they engaged in a strike.

(b) Discharging nonunit employees who make common cause with the striking employees.

(c) Threatening striking employees that if they do not return to work they will be required to requalify for group health insurance.

(d) Requiring returning striking employees to requalify for group health insurance.

(e) Bypassing the Union and dealing directly with striking employees by requiring that they agree to the requalification period for group health insurance prior to returning to work.

(f) Unilaterally, without notice to or bargaining with the Union, changing the working conditions of striking unit employees by requiring that they requalify for group health insurance. The appropriate unit is:

> All full-time and regular part-time drivers employed by the Employer in its Care-A-Van Division, located in Kalamazoo, Michigan, but excluding clerical employees, mechanics, guards and supervisors as defined in the Act, and all other employees.

(g) Rendering assistance to employees in an effort to decertify the Union.

(h) Maintaining a rule prohibiting discussion among employees of their wages.

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days from the date of this Order, offer the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Dean Chestnut	Rodney Packard
Bradley Cosgrove	Robert Schellenberg
Michele Cronk	Ron Smeltzer
Michele Holderman	Pat Smith
Ron Howard	Cory Snyder
Ernie Kreitlow	Rolland Wessell

(b) Make the following employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

Patricia Brigance	Rodney Packard
Dean Chestnut	Robert Schellenberg
Bradley Cosgrove	Ron Smeltzer
Michele Cronk	Pat Smith
Michele Holderman	Cory Snyder
Ron Howard	Rebecca Stanfill Wyman
Ernie Kreitlow	Rolland Wessell

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of the foregoing named employees and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Rescind the rule prohibiting discussion among employees of their wages.

(f) Within 14 days after service by the Region, post at its Cork Street facility in Kalamazoo, Michigan, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the

[6] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 1, 2007.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., May 8, 2008

_____
George Carson II
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discharge any of you who are represented by Local 7, International Brotherhood of Teamsters, because you engage in a strike.

WE WILL NOT discharge any of you who are not in the unit because you make common cause with striking employees.

WE WILL NOT threaten striking employees that if they do not return to work they will be required to requalify for group health insurance.

WE WILL NOT require that returning striking employees requalify for group health insurance.

WE WILL NOT bypass the Union and deal directly with you by requiring that you agree to a requalification period for group health insurance prior to returning to work.

WE WILL NOT, without notice to or bargaining with the Union, change the working conditions of striking unit employees by requiring that they requalify for group health insurance. The appropriate unit is:

> All full-time and regular part-time drives employer by the Employer in its Care-A-Van Division, located in Kalamazoo, Michigan, but excluding clerical employees, mechanics, guards and supervisors as defined in the Act, and all other employees.

WE WILL NOT render assistance to employees in an effort to decertify the Union.

WE WILL NOT maintain a rule prohibiting discussion among employees of their wages, and WE WILL rescind that rule.

WE WILL, within 14 days of the Board's Order, offer the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed:

Dean Chestnut	Rodney Packard
Bradley Cosgrove	Robert Schellenberg
Michele Cronk	Ron Smeltzer
Michele Holderman	Pat Smith
Ron Howard	Cory Snyder
Ernie Kreitlow	Rolland Wessell

WE WILL make the following employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

Patricia Brigance	Rodney Packard
Dean Chestnut	Robert Schellenberg
Bradley Cosgrove	Ron Smeltzer
Michele Cronk	Pat Smith
Michele Holderman	Cory Snyder
Ron Howard	Rebecca Stanfill Wyman
Ernie Kreitlow	Rolland Wessell

WE WILL, within 14 days of the Board's Order, remove from our files any reference to the unlawful discharges of the foregoing named employees and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

PRIDE AMBULANCE COMPANY, d/b/a PRIDE CARE AMBULANCE, CARE-A-VAN

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300, Detroit, MI 48226–2569

(313) 226–3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (313) 226–3244